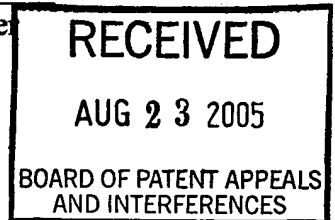


I certify that on the date specified below this correspondence is being mailed as first-class mail, postage prepaid, addressed to Board of Patent Appeals and Interferences, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Va 22313-1450.

August 17, 2005
Date

Conrad O. Gardner
Conrad O. Gardner



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appeal No. 2005-1094

Application No. 08/896,514

Applicant: Conrad O. Gardner

For: EXTENDED RANGE MOTOR VEHICLE HAVING AMBIENT

POLLUTION PROCESSING

REQUEST FOR REHEARING

Sir:

Responsive to the DECISION ON APPEAL Re Mailed July 21, 2005, applicant requests REHEARING with respect to the NEW GROUND OF REJECTION of claims 55 and 59 under 35 USC 103 over Lynch (U.S. Patent No. 4,165,795). This request for REHEARING addresses the new ground of rejection and states with particularity the points believed to have been misapprehended or overlooked in rendering the decision.

I

Claims 55 and 59 UNOBVIOUS UNDER 35 USC 103 over Lynch in view of nickel cadmium batteries

A fast charge-discharge battery is defined in applicants specification at page 7 as "a battery capable of faster charge than the current lead acid batteries, e.g. nickel cadmium". It is believed unobvious to one of ordinary skill in the art to substitute the fast charge-discharge battery in the system of Lynch for the reasons given in the attached AFFIDAVIT OF PHILIP C. MALTE UNDER RULE 132 at Appendix A.

II

For further reasons, Claims 55 and 59 are deemed UNOBVIOUS UNDER 35 USC 103

CLAIM 55

Method step (a) defines a charging process for a hybrid vehicle as "rapidly capturing power from a continuously running low horsepower engine to charge a fast charge-discharge battery without loss of said power" This defines with specificity a charging process not found in the passage quoted from Lynch at page 28, line 11 forming the basis of rejection of the claim since the passage quoted relates to "loss of power to the vehicle". Excess engine power upon return of the engine back to no-load speed is stored in parallel banks of lead acid batteries.

- (1) Lynch (U.S. Patent No. 4,165,795) teaches utilizing parallel sets of lead acid batteries to achieve storage whereas 55 teaches away from the concept of ganged sets of batteries to the use of a fast charge-discharge battery having the characteristics specified in applicants specification thereby enabling more rapid capture of power without loss thereof adding to increased efficiency and extended range due to more efficient storage of available power from the internal combustion engine.
- (2) The title of the present application is "Extended Range Motor Vehicle..." while the Lynch system can be clearly distinguished in both design considerations and hardware implementation as by the following statement (at col. 9, lines 38-41) "It will be recognized that the system described is inherently capable of supplying over a long period of time **just enough energy to accommodate the energy requirements of a particular mission**. Extended range is provided as stated in clause (a) of claim 55. This methodology as claimed with specificity is neither shown, taught or suggested by Lynch.

CLAIM 59

Method step (a) defines in the method of operating a hybrid vehicle "causing a fast charge-discharge battery to power the electric motor on **throttle demand**". The utilization of ganged sets of standard automotive starting batteries while satisfactory in Lynch are not suggestive of powering an electric motor by a battery of different electrical characteristics as defined in the specification for **accelerating** the hybrid vehicle on throttle demand. Throttle demand performance is not considered by Lynch, Operator depression... (as per claim 59) is not seen in Lynch which upon increased load and engine slow down **automatically** reverts to generator motor assist to manage the engine back to its preferred speed as pointed out in the rejection on page 29, lines 7-11. See third paragraph, line 41 on of Lynch "The response of the system is of course so smooth and continuous that the motor-generator will change modes without

the average operator noticing any change in the internal combustion engine performance". More particularly, see page 22, lines 1-3 of the Opinion where it is recognized that "the control system of Lynch is responsive solely to shaft speed, and not the accelerator pedal...."

If the proposed combination of prior art would change the principal of operation of the prior art invention (Lynch) being modified, then the teachings of the references are not sufficient to render the claim *prima facie* obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

(2) Lynch (U.S. Patent No.4,165,795)

Column 5, lines 19-20 specifies the use of "standard automotive starting batteries with a large number of thin plates". At lines 15-16, "two parallel sets of six (12 volt) batteries (72 volts) is **satisfactory**. As a consequence there is **no motivation** for further battery consideration by one of ordinary skill in the art since the solution is in hand. Further, at column 1, line 32, Lynch states that the electric drive system is "without the need for large or heavy batteries".

Motivation must come from the prior art.

Applicant's specification cannot be used for motivation - no hindsight reconstruction.

Yamanouchi Pharmaceutical Co., Ltd. V. Danbury Pharmacal Inc., 231 F. 3d 1339, 56 U.S.P.Q. 2d 1641 (Fed. Cir.), reh'd denied, 2000 U.S. App. LEXIS 34047(2000) Ability to modify insufficient.

In re Laskowski, 871 F.2d 115,117, 10 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989)

III

DECLARATION UNDER 37 CFR 1.195 REGARDING PIONEER STATUS

A determination under 35 U.S.C. 103 should rest on **all the evidence** and should not be influenced by any earlier conclusion. See, e.g. Piasecki, 745 F.2d at 1472-73, 223 USPQ at 788; In re Eli Lilly, 902 F.2d at 945, 14 USPQ 2d at 1743.

In a Supplemental Response to appellant's reply brief, the Examiner in paper No. 0704 stated "Further, appellant's request to establish "pioneer status" is not persuasive in any respect."The evidence presented by appellant of 45 patents (the number was incorrectly stated and should be 53) which cite as prior art at least one of the two patented parent cases is hardly definitive of a pioneer patent, and therefore does not distinguish over the art of record".

Appellant's DECLARATION UNDER 37 CFR 1.195 REGARDING PIONEER STATUS clearly demonstrates by overwhelming evidence through citations and recognition of others viz. of Examiners of the United States Patent Office, the demonstration of pioneer status the subject matter of this application (See Appendix B)

contrary to the Examiner's finding which evidence was not indicated as considered in the decision of the Board of Appeals.

CONCLUSION

The ultimate determination of patentability is based upon a preponderance of the evidence, with due consideration of the persuasiveness of any arguments and any secondary evidence. In re Oetiker, 977 F.2d, 24 USPQ2d 1443 (Fed. Cir. 1992). The legal standard of "a preponderance of the evidence" requires the evidence to be more convincing than the evidence which is offered in opposition to it.

Unobviousness of claims 55 and 59 within the meaning of 35 USC 103 is believed clearly proven by the above evidence which Opinion is respectfully solicited.

Respectfully submitted,



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